Supreme Court, U.S.
FILED
MAY 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

5

No. 85-1265

In the Supreme Court of the United States

OCTOBER TERM, 1985

PEOPLE OF THE STATE OF MICHIGAN, PETITIONER

v.

ASKIA KHALIL SHABAZ

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

CHARLES FRIED
Solicitor General

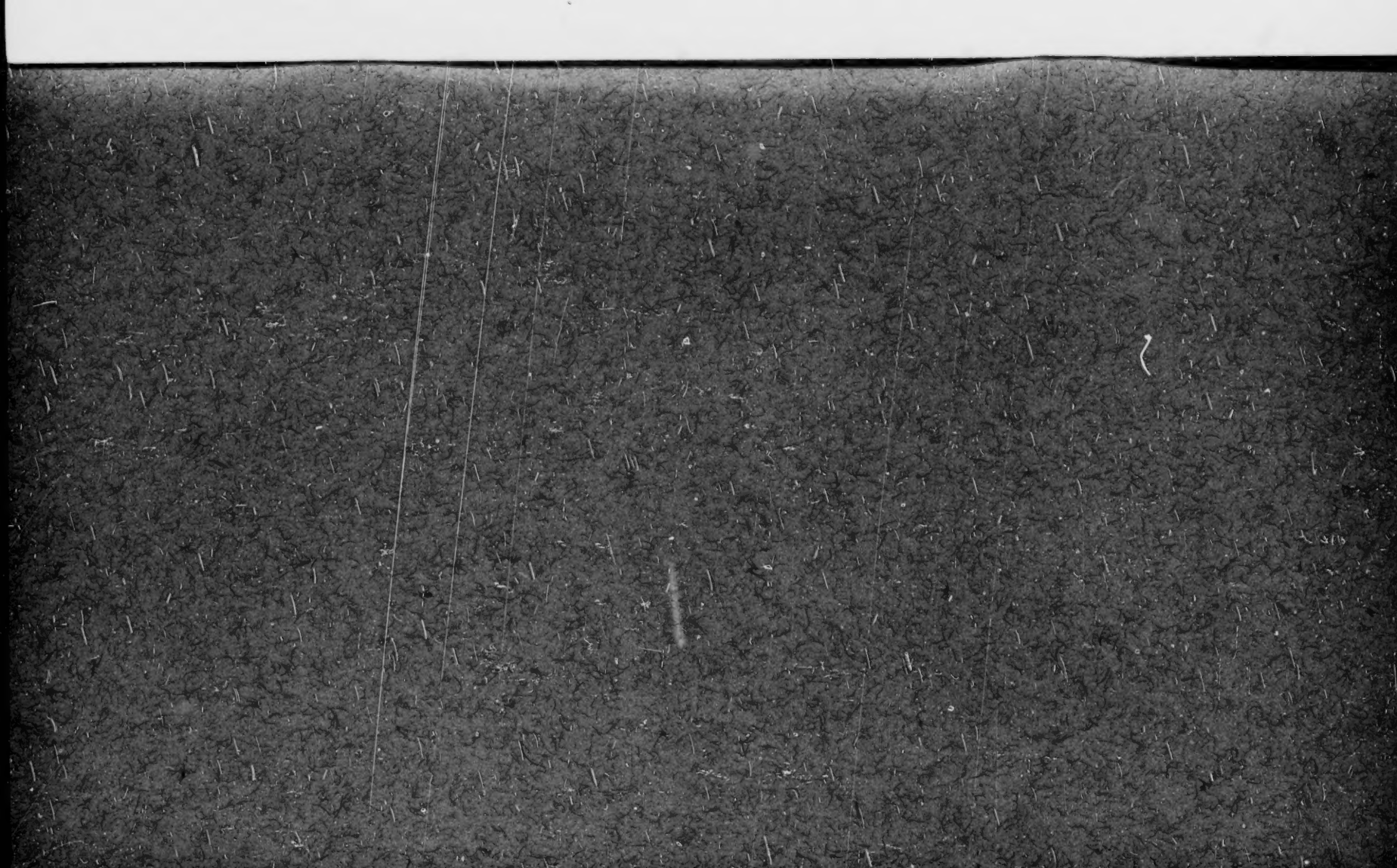
STEPHEN S. TROTT
Assistant Attorney General

WILLIAM C. BRYSON
Deputy Solicitor General

ROY T. ENGLERT, JR.
Assistant to the Solicitor General

Department of Justice
Washington, D.C. 20530
(202) 633-2217

21pp



QUESTION PRESENTED

Whether respondent's flight from plainclothes police officers, in conjunction with other suspicious circumstances, gave rise to reasonable suspicion justifying a temporary investigative stop.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Summary of argument	5
Argument:	
Respondent's flight from plainclothes police officers, when considered together with other suspicious circumstances, justified a temporary investigative stop	5
Conclusion	17

TABLE OF AUTHORITIES

Cases:

Adams v. *Williams*, 407 U.S. 143	16
Brown v. *Texas*, 443 U.S. 47	4, 8, 16
Florida v. *Rodriguez*, No. 83-1367 (Nov. 13, 1984)	9, 12
Florida v. *Royer*, 460 U.S. 491	6, 13, 14
Illinois v. *Gates*, 462 U.S. 213	8
Jeffreys v. *United States*, 312 A.2d 308	15
People v. *Boodle*, 47 N.Y.2d 398, 391 N.E.2d 1329, 418 N.Y.S.2d 352, cert. denied, 444 U.S. 969	7
Peters v. *New York*, 392 U.S. 40	7, 8, 9, 11, 12, 15
Price v. *United States*, 429 A.2d 514	15
Sibron v. *New York*, 392 U.S. 40	7
Smith v. *State*, 333 So. 2d 91	7
State v. *Sheffield*, 62 N.J. 441, 303 A.2d 68	6
State v. *Wade*, 390 So. 2d 1309	11
Terry v. *Ohio*, 392 U.S. 1	3, 5, 6, 7, 8, 11, 12, 16
Texas v. *Brown*, 460 U.S. 730	8
United States v. *Brignoni-Ponce*, 422 U.S. 873	12
United States v. *Cortez*, 449 U.S. 411	8, 11, 13, 14
United States v. *Davis*, 458 F.2d 819	15
United States v. *Green*, 670 F.2d 1148	15, 16

Cases—Continued: Page

United States v. *Lucas*, 778 F.2d 885 15
United States v. *Magda*, 547 F.2d 756 15
United States v. *Mendenhall*, 446 U.S. 544 ..... 6, 8
United States v. *Orozco*, 590 F.2d 789, cert. denied, 439 U.S. 1049 15
United States v. *Rickus*, 737 F.2d 360 15
United States v. *Sanders*, 631 F.2d 1309, cert. denied, 449 U.S. 1127 15
United States v. *Sharpe*, No. 83-529 (Mar. 20, 1985) 9
United States v. *Tate*, 648 F.2d 939 15
United States v. *Walker*, 576 F.2d 253, modified, 590 F.2d 297, cert. denied, 439 U.S. 1081 15
United States v. *White*, 648 F.2d 29 15
Wong Sun v. *United States*, 371 U.S. 471 ..... 4, 10, 11, 12

Constitution:

U.S. Const. Amend. IV 5, 6, 15

Miscellaneous:

W. LaFave, *Search and Seizure* (1978 & Supp. 1986):
Vol. 1 ..... 10, 15
Vol. 3 ..... 7, 8, 12, 14, 15, 16
L. Tiffany, D. McIntyre & D. Rotenberg, *Detection of Crime* (1967) 14

In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-1265

PEOPLE OF THE STATE OF MICHIGAN, PETITIONER

v.

ASKIA KHALIL SHABAZ

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case raises the question whether the flight of a suspect under observation by police officers is a factor entitled to substantial weight in the officers' determination to conduct an investigative stop. That question is a significant one to law enforcement agencies generally. Its resolution is likely to have an impact on federal agents enforcing federal narcotics and firearms laws. In addition, the resolution of that question is likely to affect law enforcement agencies on federal reservations and in the District of Columbia, where those agencies have general law enforcement responsibilities. Finally, this case may well have an impact on federal prosecutions by affecting

the admission in federal proceedings of the fruits of local police actions such as those taken in this case.

STATEMENT

1. At 9:15 p.m. on July 10, 1982, three plain-clothes Detroit police officers were on patrol in an unmarked standard police detective vehicle (J.A. 6, 12, 28). Respondent came out of an apartment building at 60 Clairmount Avenue just west of Woodward Avenue in Detroit (J.A. 6-7). Officer Kenneth Surma, who testified at the preliminary examination and the evidentiary hearing, said that together with his partner he had made five or six concealed-weapon arrests and about 10 narcotics arrests at the building at 60 Clairmount Avenue during his 11 years working in the area (J.A. 8-10). Officer Surma testified that narcotics and concealed-weapon offenses were common in the vicinity of the intersection of Woodward and Clairmount Avenues, that there were many prostitutes at that corner, and that the police had had particular problems with the building at 60 Clairmount Avenue (J.A. 46).

Respondent, who was carrying a paper bag and walking toward the unmarked police car, looked in the direction of the car and immediately began to stuff the bag inside his clothing (J.A. 7, 12, 30-31, 32-33, 44). Officer Surma believed that respondent had either a weapon or narcotics hidden in the bag, and for that reason his partner started slowing the car down so they could "take a better look at what he was doing" (J.A. 12, 45). Respondent passed the car and, as the car slowed down but before it came to a stop, respondent began to run (J.A. 7, 12, 33-34, 45). Officer Surma got out of the car and chased respondent on foot for the distance of approximately three

storefronts. During the chase, Officer Surma's partner, Officer Hayes, acted as a backup (J.A. 12-13). At no time did Officer Surma tell respondent to stop or identify himself as a police officer (J.A. 35, 41). Officer Surma did not draw his service revolver at any time during the chase. While Officer Surma was pursuing respondent, however, Officer Hayes at some point drew his revolver and joined in the pursuit (J.A. 15).

Respondent ducked into a doorway at 9037 Woodward Avenue and was emerging as Officer Surma reached the doorway (J.A. 7-8, 13-14, 36-37). When respondent tried to push Officer Surma away, Surma grabbed respondent and pushed him toward Officer Hayes, who had arrived on the scene by that time (J.A. 8, 14, 37). After Officer Hayes had subdued respondent, Officer Surma went into the vestibule of the building at 9037 Woodward Avenue and found a brown paper bag containing a Smith & Wesson .357 Magnum revolver (J.A. 8, 41).

2. Respondent was charged with carrying a concealed weapon. At an evidentiary suppression hearing, the court found Officer Surma to be "a totally credible witness" (J.A. 51) but felt compelled by Michigan precedent to suppress the evidence (J.A. 51-54). The court noted "that this is an unfortunate result, the Defendant having four prior concealed weapons convictions" (J.A. 54-55). The Michigan Court of Appeals affirmed (Pet. App. 2a-15a).

The Supreme Court of Michigan granted leave to appeal and affirmed over the dissent of two justices (Pet. App. 16a-89a). The majority treated the pursuit as equivalent to a "stop and frisk" under *Terry* v. *Ohio*, 392 U.S. 1 (1968), which must be justified, not by probable cause, but by "a particularized suspi-

cion, based on an objective observation, that the person stopped has been, is, or is about to be engaged in criminal wrongdoing" (Pet. App. 46a (citing *Brown* v. *Texas*, 443 U.S. 47, 51 (1979))). The majority discounted respondent's presence in a high-crime neighborhood and his emergence from a known "narcotics pad." Those factors standing alone "would not establish the grounds for an investigatory stop," the court stated, because "[a] high neighborhood crime rate ordinarily requires the presence of both innocent victims and criminal perpetration" (Pet. App. 49a-50a). The majority also discounted respondent's concealment: his "effort to conceal the paper bag in his vest, by itself, did not afford grounds for a stop" (*id.* at 50a) because law-abiding citizens may wish to conceal things in a high-crime area and the suspicion raised by concealment is "only a generalized one" (*id.* at 51a).

Finally, repeating four times that respondent's flight *alone* was not enough to justify a stop (*id.* at 52a ("flight * * * by itself"), 53a ("flight alone" and "heightened general suspicion occasioned by the flight of a surveillance subject * * * alone"), 56a ("flight alone")), the majority discounted that factor as well. The majority regarded respondent's flight not as a suspicious act, but as the exercise of a "constitutional right to 'go on his way'—at top speed" (*id.* at 54a). Citing *Wong Sun* v. *United States*, 371 U.S. 471, 482 (1963), the majority also deemed respondent's behavior "ambiguous" because the plain-clothes officers from whom he fled were "three unknown persons in a 'private' motor vehicle" (*id.* at 56a & 66a-67a n.8). In a separate section of its opinion, the majority found that the totality of the circumstances did not justify a stop because each

factor was capable of innocent interpretation and because the officers could not see contraband on respondent's person or link him to a specific crime (*id.* at 57a).

SUMMARY OF ARGUMENT

This is a simple case that may be resolved by resort to settled principles. A *Terry* stop is permitted on the basis of reasonable suspicion that criminal activity *may be* afoot. That suspicion may be based on a series of acts that may each have innocent explanations when viewed in isolation. And furtive gestures and flight at the approach of strangers or police officers are strong indicia of *mens rea*. The Supreme Court of Michigan ignored these principles. When respondent's flight from the plainclothes officers is considered in conjunction with his deliberate concealment of the paper bag and his presence in a high-crime area and building, it is beyond doubt that there were grounds for reasonable suspicion. Because this Court's precedents provide a firm basis for finding that the officers had the requisite reasonable suspicion for a *Terry* stop, the seizure of the weapon in this case was not the product of a violation of respondent's rights under the Fourth Amendment.

ARGUMENT

RESPONDENT'S FLIGHT FROM PLAINCLOTHES POLICE OFFICERS, WHEN CONSIDERED TOGETHER WITH OTHER SUSPICIOUS CIRCUMSTANCES, JUSTIFIED A TEMPORARY INVESTIGATIVE STOP

In its petition for certiorari, petitioner raised two questions: whether the officers' pursuit of respondent constituted a "seizure" for Fourth Amendment purposes, and, if so, whether the pursuit of respondent

was reasonable. The United States will address only the second issue raised by the petition.

With regard to the first issue, we believe that police pursuit of a suspect is not necessarily equivalent to a *Terry* stop, at least in the absence of an order from the police directing the suspect to halt. See, *e.g.*, *State* v. *Sheffield*, 62 N.J. 441, 303 A.2d 68 (1973). This conclusion follows from the general principle that a Fourth Amendment "seizure" of a person occurs only when a police officer restrains the person's liberty by means of "physical force or show of authority." *Terry* v. *Ohio*, 392 U.S. 1, 19 n.16; see *Florida* v. *Royer*, 460 U.S. 491, 497-498 (1983) (opinion of White, J.); *United States* v. *Mendenhall*, 446 U.S. 544, 551-555 (1980) (opinion of Stewart, J.).

In this case, Officer Surma did not identify himself as a police officer, display a weapon, or order respondent to halt. On the basis of Officer Surma's conduct, then, we doubt that there was a sufficient show of force or authority to render the pursuit a Fourth Amendment "seizure." The record reflects, however, that at some point in the course of the chase Officer Hayes, Surma's backup officer, drew his service revolver. The display of a weapon may be a sufficient show of authority to convert a pursuit into a "seizure." See *Mendenhall*, 446 U.S. at 554 (opinion of Stewart, J.). Yet, in this case, the record does not reveal at what point in the chase Officer Hayes drew his weapon or where he was when he drew it. Because of the inadequacy of the record on this issue, and because the officers' conduct was reasonable even if the pursuit is considered to be a "seizure," we submit that it is unnecessary for the Court to resolve the first question presented by the petition in this

case. We therefore turn to the question of the reasonableness of the officers' decision to pursue respondent as he ran from them.[1]

1. The three cardinal principles that govern this case may be found in *Terry* v. *Ohio*, 392 U.S. 1 (1968), and its companion cases, *Peters* v. *New York* and *Sibron* v. *New York*, which are reported together at 392 U.S. 40 (1968).

First, probable cause is not required for a stop. Rather than eliminate all innocent explanations for behavior, or even determine that behavior is more likely to be culpable than innocent, a police officer may act when he "observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity *may be* afoot" (*Terry*, 392 U.S. at 30 (emphasis added)). As Professor LaFave has written, "it would seem clear [from *Terry*] that a more-probable-than-not standard is never applicable to a brief stopping for investigation." 3 W. LaFave, *Search and Seizure* § 9.3(b), at 65 (1978). Professor LaFave collects numerous cases in

---

[1] We also disagree with the holding of the Michigan Supreme Court (Pet. App. 59a-61a) that the abandonment of property is necessarily rendered "involuntary" when it occurs during police pursuit. See, *e.g.*, *Smith* v. *State*, 333 So. 2d 91 (Fla. App. 1976); *People* v. *Boodle*, 47 N.Y.2d 398, 391 N.E.2d 1329, 418 N.Y.S.2d 352, cert. denied, 444 U.S. 969 (1979). Even when it is later determined that the police pursuit was unjustified because it was not based on a sufficient level of reasonable suspicion, the suspect's decision to discard property such as narcotics or weapons during the pursuit may be an act of sufficiently independent free will that the items should not be subject to suppression if they are subsequently recovered by the police. The State did not raise this issue in its petition, however, and we have therefore not addressed it in detail here.

which courts have "quite properly" upheld a *Terry* stop even though the actions observed are consistent with innocent activity (*id.* at 66 & n.48; *id.* at 49-50 n.48 (Supp. 1986)). See also *United States* v. *Cortez*, 449 U.S. 411, 418 (1981); *Illinois* v. *Gates*, 462 U.S. 213, 230-232 (1983); *Texas* v. *Brown*, 460 U.S. 730, 742 (1983) (plurality opinion). As the Court has emphasized, the factors supporting a finding of reasonable suspicion must be viewed in light of the inferences and deductions that a trained and experienced officer would make, "inferences and deductions that might well elude an untrained person." *Cortez*, 449 U.S. at 418; *Mendenhall*, 446 U.S. at 563 (opinion of Powell, J.); *Brown* v. *Texas*, 443 U.S. 47, 52 n.2 (1979) (a trained, experienced police officer "is able to perceive and articulate meaning in given conduct which would be wholly innocent to the untrained observer").

Second, although the officer's suspicion must be based on articulable facts, it is an improper mode of analysis to consider each fact in isolation and decide whether, standing alone, each fact would justify a stop. "[A] series of acts, each of them perhaps innocent in itself, * * * taken together [may] warrant[] further investigation" (*Terry*, 392 U.S. at 22). See also *United States* v. *Cortez*, 449 U.S. 411, 417-418 (1981) ("the essence of all that has been written is that the totality of the circumstances—the whole picture—must be taken into account").

Third, flight and furtive acts at the sight of police officers, whether in plain clothes or in uniforms, is highly significant. In *Peters*, the Court considered, under the higher "probable cause" standard, the significance of flight from an off-duty police officer in civilian clothes (392 U.S. at 48). The officer heard

noises at the door of his apartment and on investigation saw two men whom he did not know tiptoeing furtively in the hall. They took flight when the officer appeared. Chief Justice Warren wrote for the Court:

> It is difficult to conceive of stronger grounds for arrest, short of actual eyewitness observation of criminal activity. As the trial court explicitly recognized, *deliberately furtive actions and flight at the approach of strangers or law officers are strong indicia of mens rea,* and when coupled with specific knowledge on the part of the officer relating the suspect to the evidence of crime, they are proper factors to be considered in the decision to make an arrest.

392 U.S. at 66-67 (emphasis added; footnote omitted); accord, *Florida* v. *Rodriguez*, No. 83-1367 (Nov. 13, 1984), slip op. 5 (per curiam); *United States* v. *Sharpe*, No. 83-529 (Mar. 20, 1985), slip op. 4 (Brennan, J., dissenting).

2. The opinion of the Michigan Supreme Court ignores, and is inconsistent with, every one of these principles. The court hypothesized innocent explanations for respondent's behavior (Pet. App. 50a, 56a) and improperly concluded that the police officers lacked even a reasonable suspicion of criminal activity so long as they had to "speculate" that those innocent explanations were not true. The court considered separately each of three factors—presence at a high-crime location, concealment of the paper bag, and flight—and based its evaluation of the "totality of the circumstances" on the suspicious nature *vel non* of each factor standing alone. And the court treated "deliberately furtive actions and flight at the approach of strangers" not as the "strong indicia of *mens rea*" that this Court has deemed them to be, but as "am-

biguous" behavior that adds virtually nothing to other suspicious circumstances. It is this last error—the treatment of flight as insignificant—that portends the greatest interference with effective enforcement of narcotics and weapons laws.

It is beyond all dispute that flight generally is a significant factor in determinations of either probable cause or reasonable suspicion. See 1 W. LaFave, *supra*, § 3.6(e), at 669 & n.95; 3 *id.* § 9.3(c), at 74-75 & nn.96, 99 & 106. At the same time, there are certain circumstances in which flight is sufficiently ambiguous that it does not support a probable cause determination. Those circumstances are illustrated by *Wong Sun* v. *United States*, 371 U.S. 471 (1963). Based on the tip of one Hom Way, who had never before been an informant (371 U.S. at 473, 480), the police in *Wong Sun* went off "in search of one 'Blackie Toy's' laundry—and whether by chance or other means (the record does not say) they came upon [James Wah] Toy's laundry, which bore not his name over the door, but the unrevealing label 'Oye's' " (*id.* at 481). The narcotics agent who knocked on the door of that laundry at 6 a.m. "stat[ed] that he had come for laundry and dry cleaning [and,] before Toy fled, * * * never adequately dispelled the misimpression engendered by his own ruse" (*id.* at 483). In addition, the agent "made no effort * * * to ascertain whether the man at the door was the 'Blackie Toy' named by Hom Way" (*ibid.*). Since the agent had misrepresented his purpose and had no basis to suspect crime except the tip of an informant, who had named a man who might or might not be the man at the door, Toy's flight "signified a guilty knowledge no more clearly than it did a natural desire to repel an apparently

unauthorized intrusion" (*ibid.* (footnote omitted)). Thus, Toy's flight did not provide probable cause sufficient to justify breaking open Toy's door and following him to the bedroom where his wife and child lay sleeping (*id.* at 474).

The Michigan Supreme Court erred in relying on *Wong Sun* as a basis to conclude that respondent's flight lacked significance. *Wong Sun* involved not a stop but an arrest (and a particularly intrusive one); thus, the significance of Toy's flight was measured not against the reasonable suspicion standard of *Terry* but against the higher probable cause standard. The holding in *Wong Sun* that flight did not amount to probable cause hardly supports the proposition that it did not meet the lesser *Terry* standard either. Indeed, four Justices thought that Toy's flight met even the higher standard of probable cause (371 U.S. at 500-503 (Clark, J., dissenting)).

Moreover, when *Wong Sun* is read together with *Peters*, it becomes plain that it is the latter case that provides more helpful guidance on the significance of respondent's flight. Like the officers in both *Peters* and *Wong Sun*, Officer Surma was in plain clothes. Unlike the agent in *Wong Sun*, however, Officer Surma did not misrepresent his purpose.[2] Like the

---

[2] In fact, it is obvious in retrospect that respondent must have recognized Officer Surma and his partners as police officers. Had he thought otherwise, he would hardly have disposed of the paper bag containing a firearm, his means of protection. Just as the police can recognize certain kinds of behavior that is characteristic of lawbreakers but is not obvious to the untrained person (see *United States* v. *Cortez*, 449 U.S. 411, 418 (1981)), so can many lawbreakers, without extraordinary effort or perspicacity, recognize plainclothes police and unmarked standard police detective cars. See, *e.g.*, *State* v. *Wade*, 390 So. 2d 1309, 1312 (La. 1980); see also

officer in *Peters*, but unlike the agent in *Wong Sun*, Officer Surma had directly observed the specific suspect's furtive behavior (concealment of the paper bag) before the flight took place. Thus, the strong possibility of mistaken identity present in *Wong Sun* was absent from this case and from *Peters*.[3] To be sure, it was possible that, while Officer Surma had the "right person," no crime had been committed. But again, the fundamental lesson of *Terry* is that stops are justified when crime "may be afoot"; it is not necessary for the officers to have probable cause to believe that an offense has been committed.[4]

Florida v. *Rodriguez*, *supra*. This may be one of the sound reasons why Chief Justice Warren in *Peters* described flight from strangers *or* law officers as strongly indicating *mens rea*.

[3] The element of mistaken identity is critical to understanding why *Wong Sun* and *Peters* are consistent with one another. In *Peters*, the Court deemed flight from a stranger a highly significant factor in determining probable cause "when coupled with specific knowledge on the part of the officer relating the suspect to the evidence of crime" (392 U.S. at 66). In *Wong Sun*, such specific knowledge was lacking: the "evidence of crime" was a tip from Hom Way relating to "Blackie Toy," and the fleeing suspect was known only to be the proprietor of "Oye's" laundry. Of course, the present case is not an arrest case like *Wong Sun* and *Peters* but a "stop" case, and flight and furtive behavior may be considered in a stop case without being coupled with specific knowledge relating the suspect to the evidence of crime. See *Florida* v. *Rodriguez*, No. 83-1367 (Nov. 13, 1984), slip op. 5 (per curiam); *Mendenhall*, 446 U.S. at 563-564 (opinion of Powell, J.) ("[l]aw enforcement officers may rely on * * * the behavior of a suspect who appears to be evading police contact"); *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 884-885 (1975); 3 W. LaFave, *supra*, § 9.3(c), at 75 n.99.

[4] The Michigan Supreme Court appears to have read this Court's occasional use of the phrase "particularized suspi-

For these reasons, the analysis of flight by the Michigan Supreme Court cannot stand under this Court's precedents. Nor is it logically sound. The Michigan court apparently believed that to treat flight as suspicious, even in combination with other factors, would penalize respondent's exercise of his "constitutional right to 'go on his way'—at top speed" (Pet. App. 54a (quoting *Florida* v. *Royer*, 460 U.S. 491, 498 (1983) (plurality opinion))). But the Constitution is not so undiscriminating. Assuming arguendo that the police lacked adequate grounds to stop respondent when they observed him coming out of 60 Clairmount, then he had every right to keep walking along the street as he was doing. By "going on his way" in that manner, he would not have created reasonable suspicion where it did not otherwise exist. But respondent did more; as the Michigan Supreme Court recognized, he took off "at top speed." Nothing in this Court's decisions remotely suggests that any constitutional right to go on one's way precludes the police from drawing inferences from the *manner* in

---

cion" to suggest that it was necessary for the officers to suspect respondent of a particular crime before they could lawfully stop him. The court repeatedly distinguished "general" or "generalized" suspicion, which it did not dispute that Officer Surma had, from "particularized suspicion," by which it apparently meant suspicion of a particular crime. See Pet. App. 51a, 53a; see also *id.* at 57a. That, however, is not the meaning this Court has given to the term. "Particularized suspicion" simply means suspicion that is focused on a particular suspect. See *United States* v. *Cortez*, 449 U.S. 411, 418 (1981) (emphasis added) ("particularized suspicion" has two elements: assessment based on all the circumstances and "a suspicion that the *particular individual* being stopped is engaged in wrongdoing").

which one exercises that right.[5] *Peters* stands firmly to the contrary.

3. If the analysis begins, as it should, with *Peters*, it is a simple matter to conclude that the stop of respondent was supported by "articulable suspicion" (see *Florida* v. *Royer*, 460 U.S. 491, 498 (1983) (plurality opinion)). The three pertinent facts are easily articulable: (1) respondent was in a high-crime neighborhood and had just emerged from a building that was a more particular focus of crime; (2) respondent immediately sought to conceal his paper bag when he saw the unmarked police car; and (3) respondent took flight at high speed when the car slowed down.

---

[5] "As one empirical study concluded: 'A person who * * * changes his direction in an apparent attempt to avoid confronting the officer, or who flees at the sight of an officer will commonly be detained and questioned.' It is not to be doubted that such reactions may be taken into account by the police and that together with other suspicious circumstances these reactions may well justify a stopping for investigation." 3 W. LaFave, *supra*, § 9.3(c), at 74 (footnote omitted) (quoting L. Tiffany, D. McIntyre & D. Rotenberg, *Detection of Crime* 32 (1967)); see also *id.* at 75 (footnote omitted) ("stops have been upheld * * * when the person engaged in a rather extreme means of avoidance such as high-speed flight"). The record in this case confirms the importance that experienced police officers attach to high-speed flight. Officer Surma was asked by defense counsel, "If somebody came out of [a nearby] supermarket with even a smaller bag than the one that Mr. Shabaz had and put it underneath his coat or in his pants, would you stop him?" He responded, "It all depends. It could have been supermarket holdup he—if he started running, I would probably think." J.A. 48. This Court has emphasized that factors such as these "must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *United States* v. *Cortez*, 449 U.S. 411, 418 (1981).

Given the universal recognition that sudden concealment of an unknown object is a furtive gesture that may be considered with other factors in assessing the legality of a stop or arrest,[6] factors (2) and (3) combine to provide the "deliberately furtive actions and flight at the approach of strangers or law officers" that *Peters* declares to be "strong indicia of *mens rea*." We doubt that any more was necessary. But there was more. Factor (1), respondent's location at the time, is again a factor universally recognized as significant when coupled with other suspicious circumstances.[7] When this factor is added to

---

[6] See, *e.g.*, *United States* v. *Green*, 670 F.2d 1148, 1151, 1153 (D.C. Cir. 1981); *United States* v. *White*, 648 F.2d 29, 44 n.52 (D.C. Cir. 1981); *United States* v. *Sanders*, 631 F.2d 1309, 1312 & n.4 (8th Cir. 1980), cert. denied, 449 U.S. 1127 (1981); *United States* v. *Orozco*, 590 F.2d 789, 792 (9th Cir.), cert. denied, 439 U.S. 1049 (1978) and 442 U.S. 920 (1979); *United States* v. *Walker*, 576 F.2d 253 (9th Cir. 1978) (per curiam), modified on other grounds, 590 F.2d 297, cert. denied, 439 U.S. 1081 (1979); *Price* v. *United States*, 429 A.2d 514, 517 (D.C. 1981); *Jeffreys* v. *United States*, 312 A.2d 308, 310 (D.C. 1973).

[7] See, *e.g.*, *United States* v. *Lucas*, 778 F.2d 885, 888 (D.C. Cir. 1985) (per curiam); *United States* v. *Rickus*, 737 F.2d 360, 365 (3d Cir. 1984); *United States* v. *Green*, 670 F.2d 1148, 1151, 1152 (D.C. Cir. 1981); *United States* v. *Tate*, 648 F.2d 939, 942 (4th Cir. 1981); *United States* v. *Orozco*, 590 F.2d 789, 792 (9th Cir.), cert. denied, 439 U.S. 1049 (1978) and 442 U.S. 920 (1979); *United States* v. *Magda*, 547 F.2d 756, 759 (2d Cir. 1976); *United States* v. *Davis*, 458 F.2d 819, 822 (D.C. Cir. 1972) (per curiam). See also 3 W. LaFave, *supra*, § 9.3(c), at 79; 1 *id.* § 3.6(g), at 676, 678 (footnote omitted) ("To require police to disregard facts which, as a practical matter, are highly relevant to the determination of probable cause, would do violence to the underlying purpose of the Fourth Amendment's probable cause

the already strong suspicion created by flight and concealment, there can be no doubt that the stop in this case was justified. Cf. *United States* v. *Green*, 670 F.2d 1148, 1151 (D.C. Cir. 1981) (same three facts, plus a "sequence of events * * * typical of a two-party narcotics transaction," met the higher probable cause standard, even though "no one of these factors alone would be adequate to establish probable cause").

Consider the alternative. Must the police, while patrolling a high-crime neighborhood, sit by impassively when someone emerges from a notorious building, sees them, immediately conceals an object, and takes off running when they slow down? It may be that the possible innocent explanation for this behavior would have precluded an arrest based on probable cause. But to paraphrase *Terry* (392 U.S. at 23), it would be poor police work indeed for an officer of 11 years' experience in the detection of weapons and narcotics offenses in the same neighborhood to have failed to investigate this behavior further. See also *Adams* v. *Williams*, 407 U.S. 143, 145-146 (1972); 3 W. LaFave, *supra*, § 9.3(b), at 66 & n.49. We submit that the Constitution does not require that result.

---

requirement and would in fact do a disservice to the 'honest citizen' residing in a high-crime area."). Of course, the location of particular activity is ordinarily not enough, standing alone, to justify a stop. See *Brown* v. *Texas*, 443 U.S. 47 (1979).

CONCLUSION

The judgment of the Supreme Court of Michigan should be reversed.

Respectfully submitted.

CHARLES FRIED
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

WILLIAM C. BRYSON
Deputy Solicitor General

ROY T. ENGLERT, JR.
Assistant to the Solicitor General

MAY 1986

☆ U. S. GOVERNMENT PRINTING OFFICE: 1986 491507 20218